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October 24, 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Presentation
in MM Docket Nos. 92-266

Dear Mr. Caton:

Pursuant to the Commission's ex parte rule, 47 C.F.R. § 1.1206, an original and one copy of this letter are being filed in MM Docket No. 92-266 as notification that representatives of the National Association of Telecommunications Officers and Advisors ("NATOA") met on Thursday, October 20, 1994, with Meredith Jones, Mary Ellen Burns, Steve Weingarten, John Spencer, David Roberts, Lisa Higginbotham, Joann Lucanik, Cynthia Jeffries, Joel Kaufman, Jeffrey Steinberg and Mary Woytek, all of the Cable Services Bureau, to discuss questions related to the rate regulation process. The discussion centered around the enclosed list of questions, which were faxed on October 14, 1994 to Meredith Jones for distribution to participants in the meeting.

On behalf of NATOA, the following representatives participated in the meeting: Ms. Susan Littlefield, President of NATOA and Cable Regulatory Administrator for the City of St. Louis, Mo.; Ms. Joyce Daniels, Director of the Mayor's Office of Cable and Communications, the City of Baltimore, Md.; Joe Van Eaton, Esq., an attorney representing a number of local governments in rate regulation proceedings; and myself, an attorney with the law firm of Arnold & Porter and NATOA's special outside counsel on federal telecommunications matters.

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The NATOA representatives stressed the need for the Commission to clarify its rules in the areas addressed by the enclosed questions. Specifically, the NATOA representatives asked the Commission to clarify: (a) the manner by which to regulate the rates for home wiring; (b) the extent to which home wiring maintenance plans are subject to regulation; (c) the circumstances under which the offering of home wiring maintenance plans constituted a negative option; (d) the extent to which franchising authorities may regulate the rates for installation and services ancillary to the provision of basic service and for "customized" installations; (e) the regulatory status of channels offered for "free" as part of a level of regulated service; (f) the regulatory action the FCC will take once it determines that an "a la carte" package is a regulatable service; (g) whether the filing of a FCC Form 329 complaint covers all cable programming service tiers, including "a la carte" tiers the Commission may determine are regulatable services; (h) the proper time frame for calculating refund liability where rate determinations have been delayed through no fault of the consumer or franchising authority; (i) whether a cable operator has to refile the FCC Form 1200 if the franchising authority subsequent to the FCC Form 1200 filing determines pursuant to a FCC Form 393 review that the March 31, 1994 rate was unreasonable; and (j) whether FCC Form 1205, which must be filed with FCC Form 1220, is the form to be used to determine the rates for equipment and installation in a cost-of-service proceeding.¹

In addition, the NATOA representatives urged the Commission not to adopt "going-forward" rules -- which rules would govern the new rate for a tier once new programming services are added -- that would apply to the basic service tier subject to regulation by franchising authorities. Moreover, the NATOA representatives stressed that the Commission's rate regulations have become extremely burdensome for franchising authorities to administer, and asked the Commission to consider steps that would ease the regulatory burden on franchising

¹ Questions 8 and 10 on the enclosed list of questions were not discussed during the meeting due to ex parte considerations.

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authorities, such as eliminating the one year limit on refund liability, relaxing the time deadlines for making rate determinations under the Commission's rules, and limiting the number of times per year a cable operator may seek increases in external costs.

Please contact me if you have any questions regarding this matter.

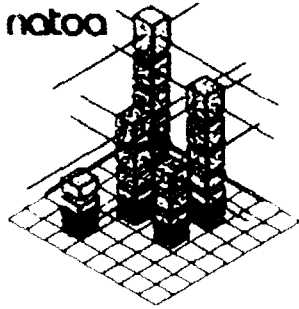
Respectfully submitted,

A handwritten signature in dark ink, appearing to read "William E. Cook, Jr.", written in a cursive style.

William E. Cook, Jr.

Enclosure

cc: Mary Ellen Burns
Lisa M. Higginbotham
Cynthia Jeffries
Meredith J. Jones
Joel Kaufman
Joann Lucanik
David Roberts
John Spencer
Jeffrey Steinberg
Steve Weingarten
Mary Woytek



**The National Association of
Telecommunications Officers
and Advisors**

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October 14, 1994

VIA FAX

Ms. Meredith J. Jones
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N. W.
Room 918
Washington, D. C. 20554

Dear Ms. Jones:

On behalf of the National Association of Telecommunications Officers and Advisors, I would like to thank you for the opportunity to submit several questions regarding rate regulation to the Federal Communications Commission for its consideration.

This list represents some of the common concerns among NATOA members throughout the country. Your guidance in these areas of concern will serve to facilitate the rate regulation process for the many franchising authorities who are now grappling with these issues.

We look forward to working with the Commission on the various issues that may arise as a result of our regulatory relationship. Again, let me express NATOA's appreciation for this opportunity to present these issues to the Commission.

Sincerely,

Susan Littlefield
President, NATOA

SL:mc

NATOA QUESTIONS FOR THE FCC

Installation and Service

1. Are home wiring (internal drop) costs ever properly considered as capital equipment recoverable through the equipment basket (i.e., be treated the same as remotes, converters, etc.)? If so, under what circumstances?
2. When may ownership of home wiring be transferred to the subscriber? When the subscriber owns such wiring, is this the only case where wire maintenance plans are acceptable? For example, if home wiring costs have been included as operating expenses on Schedule B, then maintenance and other costs should have already been factored into the figures given. Adding wire maintenance costs to subscriber's bills in this event would result in "double-dipping." If wire maintenance plans are acceptable, should these adhere to the Commissions' service contract policy as stipulated in the First Order on Reconsideration, MM Docket NO. 92-266 (FCC 93-428) at footnote 100 (released August 27, 1993).
3. May any type of installation or service activity ancillary to the provision of basic service be rate regulated by certified franchising authorities? For example, could this include activities such as A/B switch installation, VCR hook-ups, transfer charges, re-connects, (i.e., bad checks, special billings,) etc? Should all hours related to these activities then be included in HSC calculations?
4. If an operator opts for average installation charges, may it separately charge for (a) long drops (b) VCR hook-ups, (c) wall-fishes? If an operator may charge extra for a non-average installation under what circumstances can a subscriber insist on paying less for a non-average (or less costly) install?

Questions for the FCC (cont.)

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Channel Count and A la Carte Evasions

5. If an operator is offering certain channels for "free" as part of a level of regulated service, how should these channels be included when calculating the benchmark? Should the calculation be affected if the free channels are offered for a discrete period of time?
6. What regulatory action does the FCC pursue when the FCC has upheld the franchising authority's determination that a la carte channels should be counted as regulated services? Specifically, does the FCC classify the a la carte package as a cable programming services tier and immediately take action to regulate the rate of this tier? If so, should the subsequent refund liability extend back to September 1, 1993 (the initial date of the evasion). Does any programming services complaint cover the a la carte tiers, or must the complaint specifically mention the a la carte tiers? If the Commission determines that an ala carte offering is evasioneary, what is the refund liability related to basic service in communities where the basic service rates have already been approved by the franchising authority without including the a la cartes in the rate calculations?

Refund Liability and "Offsets"

7. What is the proper time frame for calculating refund liability where rate determinations have been delayed through no fault of the consumer or the franchising authority (i.e., the review time has been tolled or accounting orders have been issued because of a la carte reviews or authority was stayed pending FCC decisions on reconsideration. Specifically, is the time frame for refund liability extended beyond one year for a length of time corresponding to tolled periods or periods awaiting receipt of information?
8. The provisions of Paragraphs 103 and 104 of the Third Order on Reconsideration MM Dockets 92-266 and 92-262, (FCC 94-40), (released March 30, 1994) appear to be targeted at situations where a cable operator had not unbundled its rates by the effective date of regulation. However, operators are claiming that the language in Paragraphs 103 and 104 permits an increase in the rates of equipment and installation if the franchising authority orders refunds on programming services, regardless of when unbundling occurred. Therefore, If the cable operator, during an initial 393 or 1205 filing, understates equipment costs and in response to a refund order in a later filing includes equipment costs that it failed to include as part of its original 393 or 1205 filing, can the City deny to operator's request for increases in the equipment rates?

Questions for the FCC (cont)**Page 3****Form 1200 vs. Form 393**

9. If a local franchising authority or the FCC determines that the rates listed in a Form 393 were unreasonable but the Form 393 review was pending as of the date of a submission of a Form 1200, does such a determination render the submitted Form 1200 invalid because the Form 1200 was predicated on rates that were unreasonable as of March 31, 1994? If so, must the operator submit a new Form 1200? In this event, does the 30 or 120 day review time period start over with the new submission, or should the current period be tolled until accurate information is received and reviewed?

Advertising of Rates

10. The duty to fully apprise subscribers of all their charges for cable television services is a consumer protection function and under consumer service obligations billing rates must be clear, concise and understandable. Commission rules require that advertised rates for basic service and cable programming service tiers include all costs and fees. Yet, the rule is silent with regard to unregulated services. Therefore, please clarify whether the Commission rules prohibit a cable operator from deceptive advertising practices and thus require the cable operator to advertise unregulated services inclusive of all costs and fees